UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,983	11/29/2000	Christopher W. Fraser	777.400US1	1299

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EXAMINER
NAHAR, QAMRUN

ART UNIT	PAPER NUMBER
2124	

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	**Applicant(s)**
Advisory Action	09/725,983	FRASER ET AL.
	Examiner	**Art Unit**	
	Qamrun Nahar	2124	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may <u>only</u> be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

<u>PERIOD FOR REPLY</u> [check either a) or b)]

a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

    (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ they raise the issue of new matter (see Note below);

    (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: *1-34 and 38-58*.

    Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☒ Other: *See Continuation Sheet*

Continuation of 5. does NOT place the application in condition for allowance because: applicant's arguments are not persuasive. For example, in the remarks, the applicant argues that "In the current office action, examiner has argued that "recognizing a history operator and a history operand in the source code" is taught by Johnston. In support, examiner went on to cite several sections of Johnston that describe code hooks. However, as explained above, history operators and operands are not the same thing as code hooks. History operators and operands have additional functionality that the code hooks described by Johnston lack. Namely, history operators and operands can be directly referenced by source code so that their resulting values can determine the code flow of a program, whereas code hooks merely run within the program and monitor code flow and execution without altering code flow beyond the existence of said monitoring. Further, history operators and operands can be used to optimize and condense source code, whereas code hooks, which do not return any value and so cannot be directly referenced by the source code, cannot be substituted to optimize and condense source code. For this and other reasons, applicant maintains that Johnston cannot anticipate recognizing a history operator and a history operand in the source code as in claim 1." Examiner's Response: In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., altering code flow or optimize and condense source code) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, as previously pointed out in the Final Rejection (Mailed on 8/26/04), Johnston teaches the claimed feature "recognizing a history operator and a history operand in the source code" (column 9, lines 43-51 and column 10, lines 1-14; "code hooks", when executed, saves a data history associated with an instance of the history operand; where the history operand is identified by the locations where the code hooks are inserted. History operands are the elements in the identified locations.).

Continuation of 10. Other: Since there is no proposed amendment, claim listing is not required. However, there is an error in the claim listing presented. There is no claim listing for cancelled claims 35-37, which is required under 37 C.F.R. 1.121.

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